

MANU/BH/0114/1924

Equivalent Citation: AIR1925Pat392, (1925) ILR 4 PAT 336, 87Ind. Cas.137

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Decided On: 23.12.1924

Appellants:**Krishna Mohan Sinha**
Vs.
Respondent:**Raghunandan Pandey**

Hon'ble Judges/Coram:

Thomas Fredrick Dawson Miller, C.J., Jwala Prasad, Das, Foster and B.K. Mullick, JJ.

JUDGMENT

Thomas Fredrick Dawson Miller, C.J.

1. The question for determination in this appeal is formulated in the Order of Reference thus: "Has the Taxing Officer jurisdiction to decide a question relating to valuation for the purpose of determining the amount of court-fee payable by the Appellant either on his plaint or on his memorandum of appeal under Section 5 of the Court Fees Act and if he assumes such a jurisdiction, has the High Court any power to interfere? "The Taxing Officer has not in fact assumed any jurisdiction to determine the fee payable on the plaint or on the memorandum of appeal in the lower Courts. The only order he has made relates to the fee payable by the Appellant on the memorandum of appeal in this Court and no question arises for determination as to the Taxing Officer's powers with regard to fees payable in the Subordinate Courts. I propose therefore to confine my judgment to his powers with regard to the fee payable upon the memorandum of appeal presented in this Court.

2. The facts are as follows:--The Plaintiff, who is the Appellant before us, sued in the Court of the Munsif at Bhagalpur for a declaration of title and for possession together with mesne profits for two years, in respect of 3 bighas 10 cottahs 2 dhurs of jagir land. The mesne profits claimed for two years were valued in the plaint at Rs. 146-12-0. The land was valued at Rs. 11 being ten times the Government revenue proportionate to the land claimed, making a total of Rs. 157-12-0. The court-fee was paid on that valuation. The trial Court considered that the court-fee payable on the land should be calculated not on the Government revenue but on the market value as provided in Section 7(v)(d) of the Court Fees Act. The plaint was then amended by valuing the land at Rs. 70. This valuation was accepted in the trial Court and the deficiency of the court-fee in proportion to the higher valuation was paid. The Plaintiff succeeded in the trial Court and the Defendant appealed to the Subordinate Judge paying a court-fee on his memorandum of appeal upon the value above stated. The appeal succeeded and the Plaintiff filed a second appeal to this Court paying a court-fee on his memorandum of appeal based upon the same valuation. The Stamp Reporter whose duty it is to see that the proper fee is paid upon documents presented in this Court reported that the claim was undervalued because it was manifest that if the mesne profits amounted in round figures to Rs. 70 per annum as stated in the plaint the market value of the land must be more than Rs. 70. He considered that the value of the land based upon the yearly profits alleged in the plaint would not be less than Rs. 1,260 or 18 years' purchase. He reported that the

memorandum of appeal in this Court was insufficiently stamped and that the plaint and memorandum of appeal in the trial Court and the lower Appellate Court respectively were also insufficiently stamped. The Appellant being aggrieved the matter was referred under Section 5 of the Court Fees Act, 1870, to the Taxing Officer who found that the Stamp Reporter had correctly valued the land and that the court-fee was payable on the increased valuation. He allowed the Appellant three weeks time to make up the deficiency on the memorandum of appeal, failing which he directed the appeal to be placed before the Bench for orders. The Appellant considering that the Taxing Officer was acting without jurisdiction refused to pay the court-fee within the time ordered and the case came before the Bench for disposal. The Appellant contended that the Taxing Officer had no jurisdiction to consider the question of valuation of the subject-matter of the suit for the purpose of deciding the amount of fee payable on the memorandum of appeal and that his order was ultra vires and not binding. It was contended, on the other hand, that the Taxing Officer had jurisdiction and that his order was final. The Bench before whom the case came considered that the Taxing Officer had exceeded his powers and differing from the earlier decision of this Court in *Ram Sekhar v. Prasad Singh Sheonandan Dubey* A.I.R. 1928 Patna 137 referred the case to a Full Bench formulating the question of law as above stated.

3. The Court Fees Act of 1870 as amended by subsequent legislation is divided into seven chapters which, as indicated by their headings, purport to deal with different subject-matters. Section 5 under which the Taxing Officer acted in this case is included in Chap. II which is headed, "Fees in the High Courts and in the Courts of Small Causes at the Presidency-towns." It provides as follows:

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the Taxing Officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

4. When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

5. The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section."

6. In determining what is meant by fees paid under this chapter the heading is important, but reference must also be made to Sections 3 and 4. Section 3 provides as follows:

3 The fees payable for the time being to the clerk and officers (other than the she-riffs and attorneys) of the High Courts established by Letters Patent by virtue of the power conferred by Section 15 of the Indian High Courts Act, 1861, or Section 107 of the Government of India Act, 1915; or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14, 20 and 21

of the second schedule to this Act annexed; and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns, and their several offices; shall be collected in manner hereinafter appearing.

7. The reference to the Government of India Act of 1915 was added by an amending statute passed in 1917. The mode of collecting the fees mentioned in Section 3 is dealt with in Section 25 which provides that they shall be collected by stamps. The fees mentioned in Section 3 are such as would be payable in the High Courts under their Ordinary Original Jurisdiction or in appeals from orders or decrees passed in the exercise of such Jurisdiction and this is indicated in the margin by the words "levy of fees in the High Courts on their Original Sides." Section 4, on the other hand, as the marginal notes indicate, deals with the fees on documents coming before the High Courts in the exercise of their Appellate or Revisional Jurisdiction in cases coming from the subordinate Courts, or in their Extraordinary Original Jurisdiction. It provides, in effect that none of the documents mentioned in the first or second schedules of the Act as chargeable with fees shall be filed, exhibited or recorded in, or shall be received or furnished by a High Court exercising the jurisdiction named unless the same are sufficiently stamped as provided in the schedules. The section is a prohibition against the use of improperly stamped documents and in that sense may be said to make the fees on those documents payable, at least in so far as they are payable in High Courts. Section 6 which comes under Chap. III contains a similar prohibition in respect to the subordinate Courts. It would seem therefore that Section 5 which is part of Chap. II is referring to those fees mentioned in Section 4 which are payable in the High Courts when it refers to the duty to see that any fee is paid under this chapter. Such fees would include a memorandum of appeal presented in the High Court in appeals from subordinate Courts and, if such a document requires to be stamped and a question arises between the Stamp Reporter, who is the officer charged with the duty mentioned in Section 5, and the suitor as to the amount thereof, the Taxing Officer, who is the Registrar in this Court, is the proper person to determine the question and unless he refers it to the Taxing Judge his decision is final.

8. The first question is whether such a document requires a stamp. If a memorandum of appeal presented in a High Court when exercising the jurisdiction mentioned in Section 4 is a document referred to in either of the schedules then until sufficiently stamped as prescribed in the schedule it cannot be received in the High Court and the appeal is not properly instituted.

9. A difficulty arises at the outset owing to the wording of Schedule 1, Article 1, which prescribes the stamp fee for, inter alia, a memorandum of appeal. The language of Article 1 of Schedule I would appear to exclude such documents when presented in a High Court. The documents there mentioned are those presented in any Civil or Revenue Court except those mentioned in Section 3. The Courts mentioned in Section 3 are High Courts and certain of the Small Cause Courts. Section 4 carries the case no further, for the prohibition in that section against the reception of documents extends only to documents of the kinds specified in either of the schedules. We are therefore driven back to the schedules. If the document specified in Article 1 of Schedule I are those presented in Courts other than High Courts and Small Cause Courts, there would appear to be no provision for stamping a memorandum of appeal presented in a High Court. The Act can hardly have been intended to exclude so important a document as a memorandum of appeal presented in the High Court exercising Appellate Jurisdiction and so far as I am aware the point has not been definitely raised but it has always been assumed that it was included.

The wording of this Act is in some respects certainly unscientific and difficult to interpret and its interpretation has been the subject of a multitude of decisions in the Courts. It seems to me that the intention was to include a memorandum of appeal presented in the High Court amongst the documents referred to in Section 4, the words "documents of any of the kinds specified in the first or second schedules" being a description of the documents mentioned in the schedules without reference to the words of exclusion appearing in Article 1 of Schedule I. Or it may be that Schedule I, Article 1 was intended to exclude from the documents there named only those presented to the High Courts on their Original Sides and the Small Cause Courts. In either case the wording is unfortunate. But as the point was conceded in argument it need not be further discussed.

10. The substantial question which was argued before us was whether in ascertaining the fee payable on the memorandum of appeal presented to the High Court on appeal from the subordinate Courts the question of valuation can be taken into account by the Taxing Officer to whom the matter has been referred, or whether the Taxing Officer is bound by the valuation appearing on the memorandum of appeal where such valuation has been accepted in the lower Court either without question or after contest.

11. The wording of Section 5 is undoubtedly wide enough to cover any question which may arise, including valuation, for the purpose of ascertaining the amount of fee payable in the High Court. It is contended, however, that all questions of valuation are under Section 12 to be determined by the lower Court and that the decision there arrived at is final and cannot be disturbed except under the express conditions referred to in the second clause of Section 12 which is contained in Chap. III. That Chapter is headed "Fees in other Courts and in Public Offices." Section 12 provides as follows:

I. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

II. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of Section 10, para. 11, shall apply.

12. It should be mentioned that Sections 9 and 10 in the same Chapter provide machinery for ascertaining the value of land and houses, the subject-matter of a suit when the Court thinks that the value has been wrongly estimated to the detriment of the revenue. It was contended on behalf of the Appellant that the power given under Cl. II of Section 12 is confined to the Court of appeal in which the question arises and that the Taxing Officer is not the Court for the purposes of Section 12. Assuming without deciding that this contention is accurate it seems clear, in my opinion, that Section 12 has no application to a question of Court-fees payable on a memorandum of appeal presented to a High Court but only applies to the fees payable in other Courts. It is true the High Court would have the power conferred by Cl. II but the fees dealt with are the fees paid in the lower Court, for the fees dealt with in Chap. III

which includes Section 12 are stated to be the fees in other Courts and in Public Offices, that is, in Courts other than those referred to in Chap. II, and questions relating to the fees payable in the High Court are not governed by any of the provisions in Chap. III unless it should appear from the context that they are necessarily included. It was suggested that Chap. III which includes Sections 6 to 19 does in fact, in some cases, deal with fees payable in the High Court and Section 8 was referred to as an instance. This section deals with the fee payable on a memorandum of appeal against an order relating to compensation under any Land Acquisition Act for the time being in force, and under the Land Acquisition Act of 1894 such appeals lie only to the High Court. The section, however, is not inconsistent with the heading of Chap. III, for in 1870, when the Court Fees Act was passed by the Land Acquisition Act then in force such appeals lay to the District Judge and no inference can be drawn from this section that Chap. III was intended to deal with fees payable in the High Court. Section 15 was also referred to which provides for repayment in certain cases of so much of the fee paid on an application for review as exceeds the fee payable on any other application to the Court under the second Schedule, Article 1, Clause (b) or Clause (d) where the Court reverses or modifies on review its former decision. Clause (d) in Article 1 of the second Schedule is an application presented to a High Court. The fee therefore repayable may be part of the fee paid upon an application for review in the High Court as the section now stands. But this also, it must be remembered, is a piece of patch work legislation. In the Act as originally passed the words "plaint or memorandum of appeal" appeared instead of the word "application" and, although the word "application" was substituted in place of the words "plaint or memorandum of appeal" by a later Act of the same year, it would appear that the fee actually recoverable under the Act, as originally passed, was part of that paid on the plaint or memorandum of appeal. This was an obvious blunder and had to be rectified by an amending Act. As already stated in another connection the drafting of this Act is somewhat unscientific and its interpretation certainly gives rise to considerable difficulty, but even if there should be found in Chap. III an isolated instance of reference to fees payable in a High Court I think that the intention of the Act was to deal in that Chapter with fees payable in the subordinate Courts only, unless the contrary must necessarily be inferred from the context.

13. The High Court may undoubtedly under the second clause of Section 12 require a party to pay an additional fee upon the plaint or memorandum of appeal in the lower Court and this power is conferred on the Court itself as distinguished from the Taxing Officer whose powers are confined under Section 5 to the fees payable in the High Court. Similarly, in my opinion, the fees mentioned in the first clause of Section 12 are those payable on a plaint or memorandum of appeal in the subordinate Courts and the section does not impose upon the High Court as distinguished from the Taxing Officer and the Taxing Judge the duty of deciding questions relating to valuation for the purpose of determining the amount of the fee chargeable in the High Court on a memorandum of appeal. The powers of the High Court in this respect, in so far as the fees payable in that Court are concerned, are delegated under Section 5 to the Taxing Officer and the Taxing Judge. It was argued that it would be contrary to the intention of the Act to allow the High Court to go into questions of valuation when no machinery is provided in Chap. II similar to that given in Chap. III for determining such questions. Sections 9 and 10 of Chapter III give the other Courts power to issue a commission to hold a local or such other investigation as may be necessary to determine the value of the subject-matter of the suit but no express provision for this purpose is made in Chap. II. I am not much impressed by this argument, for once it is determined that the power of the High Courts to decide the

amount of the fee payable on the memorandum of appeal presented in those Courts is delegated to the Taxing Officer and the Taxing Judge under Section 5 those officers could always, if need be, require evidence to be produced before them and to hold an investigation as to the value of the subject-matter, for they would have all the powers incidental to the discharge of those duties which the High Court itself possessed.

14. In my opinion the Taxing Officer or Taxing Judge, as the case may be, is under Section 5 the proper person to determine the fee payable on a memorandum of Appeal presented to the High Court and, for this purpose, he may investigate the question of the proper valuation of the subject-matter of the appeal. Even under Section 12, Clause 1, it would appear that in the Subordinate Courts it is the Appellate Court which alone can decide the question of valuation for the purpose of determining the amount of fee chargeable on the memorandum of appeal presented in that Court and for this purpose it could if necessary, exercise the powers conferred by Sections 9 and 10. It can also, as can the High Court, exercise the power conferred by Clause II of Section 12 if it thinks the question has been wrongly decided in the Court below. It would, I think, be an anomalous state of affairs if the High Court alone had no power to decide the question of valuation for the purpose of determining the amount of the fee chargeable on the memorandum of appeal presented before it, a power which the lower Appellate Court possesses in determining the amount payable on its own memorandum of appeal. The scheme of the Act appears to me to be that in the subordinate Courts under Section 12 the trial Court alone has power to decide what is the proper valuation for the purpose of determining the fee payable on the plaint and the Appellate Court alone has the like power with regard to the memorandum of appeal presented in that Court, even if the trial Court has arrived at a different valuation, and each Court's decision is final subject to the provisions of the second clause of Section 12. Under Section 5 the High Court also has similar powers with regard to its own memorandum of appeal, which powers, however, are delegated to the Taxing Officer or the Taxing Judge whose decision again is final. Even if those officers should make a manifest mistake in the exercise of their jurisdiction, their decision is not subject to appeal to or review by the Court itself. In the present case I consider that the Taxing Officer was acting within his jurisdiction and his decision cannot be disturbed by this Bench. As the Appellant has deliberately elected not to pay the fee ordered by the Taxing Officer after time was given to him for that purpose but has chosen to rely upon his right to question the Taxing Officer's jurisdiction I think that his memorandum of appeal should be rejected as not having been properly presented in time.

15. Before concluding this judgment I desire to point out that although there was some evidence before the Taxing Officer upon which he might arrive at a decision on the question before him it is essentially desirable that the Taxing Officer in determining questions of valuation should not as a rule base his decision merely upon allegations in the plaint as to the annual profits of the property to be valued. It may be that such valuation was over-estimated in the plaint as sometimes happens. In order to arrive at a proper decision on such questions it would be better that the parties should be called upon to produce in such manner as may be convenient such documentary or other evidence as they may be prepared to tender, to enable him to decide the question. He will then be in a position to deal adequately with the matters in dispute.

B.K. Mullick, J.

16. I agree with the judgment just delivered by the learned Chief Justice and I still

think that the case of Ram Sekhar Prasad Singh v. Sheonandan Dubey A.I.R. 1928 Patna 137 was rightly decided. The Court Fees Act in spite of its obscure drafting seems to me to lay down the following scheme for the taxation of plaints and memoranda of appeals.

17. Suits and memoranda of appeals are classified according to the subject-matter or the subject matter in dispute or the nature of the relief claimed, Schedules I and II endeavour to give a, comprehensive classification of the various kinds of suits with reference to these heads of classification. The schedules also provide that the proper fee payable on some documents shall vary according to the Court in which they are tiled and that in regard to others there shall be no such variance. Again in Schedule II it is declared that the plaints and appeals in the suits therein specified shall bear the fixed fees prescribed while in Schedule I are specified various suits in which the plaints and appeals shall bear an ad valorem fee. Article 1 of Schedule I provides that the fee payable on plaints and appeals in suits not otherwise provided for in this Act when presented to any Civil or Revenue Court except those mentioned in Section 3 of the Act shall be levied upon the amount or value of the subject-matter in dispute according to certain rates given in a table at the end of the schedule. The words, "not otherwise provided for in this Act" refer to certain sections in the body of the Act and to the remaining articles of Schedules I and II Section 3 of the Act which falls in Chap. II provides that in respect of certain proceedings in the Original Side of a Chartered High Court and in all suits in the Small Cause Courts in Presidency Towns court-fees on plaints and applications shall be collected in the manner provided in Chap. V of the Act. The section is not a charging section and merely prescribes the mode of collection. The fees leviable on the Original Side of a Chartered High Court and in the Presidency Small Cause Courts are prescribed by enactments other than the Court Fees Act.

18. Section 4 of the Act is a charging section and declares that no document, which is chargeable under Schedules I and II, shall be received in the High Court in exercise of its extraordinary Original Civil Jurisdiction, or extraordinary Original Criminal Jurisdiction, or Appellate Jurisdiction, or its jurisdiction as a Court of Reference and Revision unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. The language of the section when read with Article 1 of Schedule I may raise a doubt as to the fee chargeable on a memorandum of appeal; but in my opinion the meaning of the legislature is that the fee on a memorandum of appeal preferred in the High Court shall not be less than that which would have been payable on the document if it had been filed in the Courts referred to in Article 1, Schedule I.

19. I next turn to Chap. III which deals with fees in Courts and public offices other than those referred to in Chap. II. S. 6 in this Chapter is the charging section and it declares that no plaint or memorandum of appeal shall be received unless in respect of it there be paid a fee of an amount not less than that indicated in Schedule I or II as the proper fee for such document.

20. Let us next refer to the procedure to be followed when a plaint or a memorandum of appeal is filed in a Court other than a Chartered High Court or a Presidency Small Cause Court.

21. The Court will first of all decide into which of the various classes enumerated in Schedules I and II the document falls. This has sometimes been called deciding the category of the suit. The process involves the construction of the plaint and a

determination of the real relief prayed for. It is essentially judicial and requires the Court to be astute to see that reliefs are not so cast as to secure an evasion of the Court Fees Act. A familiar instance is when declarations are only asked when consequential relief is the real claim.

22. The Court will then proceed to see whether the proper fee is a fixed fee under Schedule II or an ad valorem fee under Schedule I. No question of valuation arises if the fee is a fixed fee; but if an ad valorem fee is leviable then the Court will proceed to value the subject matter or the subject-matter in dispute or fix the amount of the relief claimed according to rules for computation set out in Sections 7 and 8 of the Act. If a local or further investigation is necessary the Court may proceed under Section 9. This computation is the valuation referred to in Section 11 of Chap. III and the Court's adjudication on a question relating thereto is final in respect of a plaint or memorandum of appeal under the first clause of Section 12.

23. It has been held that a question of valuation does not include a question of category and although the two questions may in practice often overlap and a decision on a question of valuation for the purpose of determining the amount of fee chargeable may involve a decision on the question of category, it has been conceded here before us that a decision on a question of category is not final within the meaning of Clause (1) of Section 12, while a decision on a question of valuation pure and simple as defined above is final as between the parties to the suit. The second clause of Section 12, however, gives a Court of appeal power to collect deficit Court-fees in respect of fees payable in subordinate Courts, and it seems now settled that the High Court as a Court of appeal, reference and revision is competent to exercise this power in respect of all Courts subordinate to it.

24. Section 12 does not apply to the Original side of the High Court but does the first clause of it apply to the Appellate Side of that Court? I think the answer is in the negative.

25. The scheme of the Act does not permit us to hold that the first clause is applicable to High Courts, and the heading of Chap. III, in which Section 12 falls specifically states that this Chapter applies to fees in Courts other than those referred to in Chap. II. It is true that Section 8 deals with the fee payable in Land Acquisition appeals which lie now exclusively to the High Court and that Section 15 which also falls under Chap. III deals with the refund of Court-fees upon applications for review in certain Courts including the High Court. I agree with the learned Chief Justice that Section 8 does not raise any difficulty. When that section was first enacted, appeals in certain Land Acquisition cases lay to Courts other than the High Court and the inclusion of the section in Chap. III of the present Act merely means that in the event of the former jurisdiction of these latter Courts being restored, the Court-fee shall be computed in accordance with the section. The section does not in terms provide for fees on a memorandum of appeal to the High Court and in my opinion the charging section for such appeals still remains Section 4 of the Act.

26. With regard to Section 15 it is to be observed that the section deals not with the payment of fees but with refunds, and it does not assist us in deciding whether the first clause of Section 12 is applicable to a High Court. Further I agree with the learned Chief Justice that the reference to a High Court in this section is probably due to some carelessness in drafting and it seems to me that the proper place for the section was in Chap. VI which deals with miscellaneous matters.

27. Next let us inquire who is the authority competent to determine a question of valuation or a question of category with respect to a memorandum of appeal presented to a High Court on the Appellate Side. In my opinion Section 5 designates the authority. It prescribes that in all High Courts there shall be, firstly, an officer whose duty it is to receive the memorandum; secondly, an officer who shall be the Taxing Officer; and thirdly, when the Chief Justice so directs, a Judge of the High Court who shall be appointed to determine disputes arising between the suitor and the Taxing Officer. It is not necessary to consider what would be the position if there was no Taxing Officer appointed; but the law states in clear and unequivocal language that so long as there is a Taxing Officer his decision shall be final as regards the amount of the Court-fee payable. This decision must include a determination not only on the question of category but also on the question of valuation. It is conceded that the Taxing Officer of this Court has jurisdiction to decide a question of category, but it is urged that he has no jurisdiction to decide a question of valuation which requires the exercise of judicial functions, and it is suggested that by Section 12 the High Court is the only authority that can decide that question.

28. Now in the first place I have already expressed the opinion that the first clause of Section 12 does not apply to High Courts and in the second place if it is sought to create jurisdiction by the application of Section 107 of the Code of Civil Procedure the answer is that in view of the unrestricted language of Section 5 of the Act it must be assumed that the legislature intended to divest the Court and to transfer its jurisdiction to the Taxing Officer. The decision of a question of category often requires the exercise of judicial powers of a higher order than the decision of a question of valuation: this is recognized in Section 12 which confers finality only as to the latter, and it could not have been intended to grant to the Taxing Officer jurisdiction as to the more difficult question and to deny it as to the less difficult ones.

29. If on the other hand it is contended that the Taxing Officer has jurisdiction neither to determine a question of category nor a question of valuation, then his jurisdiction must be limited to an exercise in arithmetic only and this could not possibly have been intended by the Act.

30. But it is pointed out that the Act provides nothing of the nature of Section 9 for the Taxing Officer. The answer to this is that the jurisdiction to fix the amount of the Court-fee being given the law implies that the Taxing Officer shall have power to adopt such procedure as may be necessary for the exercise of that jurisdiction. Certainly a taxing statute must be strictly construed, but in this case the power to hold an inquiry is in aid of the subject and in no way to his prejudice; nor is its repugnant to the Act. The fact is that where the High Court has delegated its jurisdiction to a Taxing Officer, it has no jurisdiction left to do any of the acts which it could otherwise have performed, and if the Taxing Officer cannot decide question of valuation no other authority can discharge that duty.

40. I agree however that in the case before us the inquiry has been too summary and that the Taxing Officer would have been well advised to have called upon the suitor to give further evidence of the value of the subject-matter in dispute. The Taxing Officer had power either to take evidence himself or to refer the matter to the trial Court, but though it is unfortunate that he preferred to rely on the somewhat meagre materials on the record it cannot be said that he has acted without jurisdiction. His decision is therefore final.

Jwala Prasad, J.

41. The question referred to us for decision runs thus:

Has the Taxing Officer jurisdiction to decide the question relating to valuation for the purpose of determining the amount of Court-fee payable by the Appellant either on his plaint or on his memorandum of appeal under Section 5 of the Court-Fees Act, and if he assumes such a jurisdiction has the High Court any power to interfere?

42. Now, what is the power of the Taxing Officer under Section 5 of the Court-Fees Act (Act VII of 1870)? That section occurs under Chap. II of the Court-Fees Act headed "Fees in the High Courts and the Courts of the Small Causes at the Presidency-towns," and it runs as follows:

When any difference arises between the Officer whose duty it is to see that any fee is paid under this Chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof the question shall, when the difference arises in any of the said High Courts, be referred to the Taxing Officer, whose decision thereon shall be final, except when the question is in his opinion, one of general importance, in which case he shall refer it for the final decision to the Chief Justice of such Court or of such Judge of the High Court as the Chief Justice shall appoint generally or specially in this behalf.

43. We are not concerned with para. 2 of that section which relates to the Courts of Small Causes. Para. 3 of the section says that the Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of the section. Under this paragraph the Chief Justice of this Court has appointed the Registrar as the Taxing Officer. The Stamp Reporter is the Officer whose duty under the first paragraph of the section is to see that proper fee is paid under Chap. II of the Court Fees Act. Chap. II which relates to fees in the High Courts consists of three sections namely, Sections 3, 4 and 5. Section 3 relates to levy of fees in High Courts on their Original Sides. This High Court has no Original Jurisdiction and therefore we are not concerned with that section.

44. Section 4 deals with fees on documents coming before the High Courts in the exercise of their Appellate or Revisional Jurisdiction in cases coming from the subordinate Courts or in their Extraordinary Original Jurisdiction. It provides that no document of any of the kinds specified in the first or second Schedule of the Act chargeable with fees shall be filed, exhibited or recorded in, or shall be received or furnished by a High Court exercising the jurisdiction named, "unless in respect of such document there be paid a fee of an amount not less than that indicated in any of the said schedules as the proper fee for such document." A memorandum of appeal is a document within the meaning of this section; *Balkaran Rai v. Govind Nath Tiwari* [1890] 12 All. 129. Thus if a memorandum of appeal is filed in the High Court the Court-fee leviable will have "to be determined with respect to Schedules 1 and 2. Memorandum of appeal is mentioned in Article 1, Sch, I and in Articles 11, 17, 20 and 21 of Schedule II. Articles 11, 17, 20 and 21 of Schedule II have prescribed fixed sums to be payable on memorandum of appeal filed in any Court and no question of valuation arises for the purposes of determining the Court-fee payable in those cases. Article 1 of Schedule I applies to memoranda of appeals presented to any civil or revenue Court except those mentioned in Section 3. Section 4 not having been excepted, a memorandum of appeal filed in the High Court will come under this

Article though it is not happily worded. The amount of fee payable under this Article depends upon "the amount or value of the subject-matter in dispute" as mentioned in column 2 of the schedule. Therefore in order to ascertain the amount of fee payable upon a memorandum of appeal under Article 1, Schedule I, the amount of value of the subject-matter in dispute has to be determined.

45. In order to ascertain the fee payable upon a memorandum of appeal coming under the aforesaid Articles 11, 17, 20 and 21 of Schedule II, the nature of the document has to be determined. For instance, in order to apply Article 11 of that schedule it has to be ascertained whether the appeal is from a decree or an order having the force of a decree. If it is from a decree or an order having the force of a decree. Article 11 does not apply and the Court-fee payable will be upon "the amount or value of the subject-matter in dispute" under Article 1 of Schedule I. Similarly, in order to apply Article 17 of Schedule II it will have to be ascertained as to whether the memorandum of appeal is with respect to suits enumerated therein, for instance, whether or not it is with respect to a suit to obtain a declaratory decree where no consequential relief is prayed. Likewise, the nature of the appeal will have to be ascertained in order to apply Articles 20 and 21 of Schedule II. Therefore, in order to find out whether a memorandum of appeal filed in the High Court is properly stamped under the Schedule I and II, the nature of the suit, the nature of the decree or order appealed from or the amount or the value of the subject-matter in dispute as the case may be, will have to be determined. Upon the determination of this question will depend the proper Court fee payable under Schedule I and II. There are certain documents which need not bear any Court-fee, such as a written statement which does not plead a set-off or a counter claim. Therefore the question as to the necessity of paying a fee with respect to a document filed in the High Court, say with respect to suits tried by the High Court in its Extraordinary Original Jurisdiction, will have also to be determined and for this purpose the nature of the document has to be ascertained. Therefore two questions arise with respect to a document filed, exhibited or recorded in or received, or furnished by a High Court, namely, (1) the necessity of paying a fee and (2) the amount of fee payable.

46. Reading Section 4 and Schedules I and II the fee payable upon a document filed in the High Court is a fee payable under Chap. II of the Court Fees Act.

47. Under Section 5 of the Act it is the duty of the officer appointed in this behalf by the High Court, say the Stamp Reporter to see whether and what fee is payable under Chap. II upon a document filed, exhibited or recorded in or received or furnished by the High Court. His duty is to see under what Articles or Schedules I and II the aforesaid document falls. If it is a document with respect to which a fee is to be paid under the said schedules it is his duty to find out the amount of the fee leviable upon it, Therefore with respect to a memorandum of appeal filed in the High Court it is the duty of the Stamp Reporter as an officer of the Court to determine under which Article of the said schedules the document falls and the amount of fee payable with respect thereto. If he finds that the memorandum of appeal falls under Article 1 of Schedule I of the Act, he has to find out "the amount or value of the subject-matter" as stated in column 2 of the Article in order to determine the amount of fee payable under column 3 of that schedule. In other words, he has to determine the value of the subject-matter in dispute for without it the amount of fee payable cannot be ascertained. Therefore the question of valuation is involved in the determination of the amount payable upon a memorandum of appeal. If the suitor contests the amount fixed by the Stamp Reporter, a difference arises between him and the officer whose duty it is to see that proper fee is paid under Chap. II of the Court Fees Act upon the

memorandum of appeal. When such a difference arises the question shall be referred to the Taxing Officer. This contest gives rise to an issue and that issue has to be determined by the Taxing Officer. The issue may be with respect to the nature of the document in order to find out in which category of the schedules the document falls, or it may be as to the value of the subject-matter in dispute upon which the amount of fee payable depends. In the latter case the question of valuation is involved in the determination of the issue. The Taxing Officer has, therefore, jurisdiction to determine the question relating to valuation for the purpose of determining the amount of Court-fee payable under Section 5 of the Court-Fees Act.

48. It has, however, been argued at the Bar that if the legislature had intended to give jurisdiction to the Taxing Officer to determine questions of valuation under Section 5 of the Act, provisions similar to Sections 9 and 10 in Chap. III would have been made in Chap. II, providing proper machinery for the purpose of determining valuation. As was pointed out in the Full Bench case of *Amjad Ali v. Muhammad Israil* [1897] 20 All. 11 the procedure enjoined by the statute and practice of the High Court and of the District Courts is so very different in these matters that no useful analogy can be drawn from them. The duty of determining the fees in the subordinate Courts, Original and Appellate, under Section 6, Chapter III of the Act rests in those Courts, whereas such a duty is cast upon the Officer appointed under B. 5 of the Act with respect to fees payable on documents filed in the High Court. The subordinate Courts have been given powers under Section 9 and 10 of Chap. III to determine the net profits or market value of the subject-matter in dispute. In the High Court the duty of determining the fee payable upon a document, such as memorandum of appeal presented to the High Court, is cast upon the officer appointed under Section 5 of the Act to see that proper fee has been paid. It is only when a difference arises between the said officer and the suitor that the matter is referred to the Taxing Officer for his decision. The power of deciding the question given to the Taxing Officer implies the power to make an enquiry as to the amount payable upon the document, and if the amount of court-fee payable depends upon valuation the Taxing Officer has power to inquire into questions relating to valuation. Therefore, in vesting the Taxing Officer with power to give decision with respect to a dispute between the suitor and the officer of the Court referred to therein as to the amount of fee payable depending upon the value of the subject-matter in dispute the legislature has impliedly vested the Taxing Officer with power to make inquiries into the question of valuation and to fix the amount of Court-fee payable.

49. Lastly it has been argued that Clause (2) of Section 12 gives power to the High Court to determine the question of valuation in order to determine the proper fee payable upon a plaint or memorandum of appeal when the matter comes before it in appeal, reference or revision. That clause relates only to plaint and memorandum of appeal filed in the subordinate Courts, and does not relate to memorandum of appeal filed in the High Court, and the power given thereunder can only be used when the question of valuation is wrongly decided by the Courts "to the detriment of the revenue." Therefore, the contention based upon Section 12 is not tenable. Besides, the language of Section 12 is different from that of Section 5. Under Section 12 it is merely the decision of the subordinate Courts as to valuation, and not as to the category in which the suit or appeal falls which is final, whereas under Section 5 the decision of the Taxing Officer is final as to the amount of fee determined by him to be payable upon the memorandum of appeal or other documents filed in the High Court, no matter how he arrives at his conclusion, namely, by determining the valuation or the category: *Kunwar Karan Singh v. Gopal Rai* [1909] 32 All. 69 (Tudball, J.).

50. It would thus appear that the Taxing Officer has not only jurisdiction to decide questions relating to valuation but that his decision thereupon shall be final for the purpose of determining the amount of Court-fee payable by the Appellant on the plaint or the memorandum of appeal under Section 5 of the Court Fees Act, and a Division Bench has no right to question it. This High Court has taken this view in the cases of Chunderbati Kuer v. Gorey Lall Singh [919] 4 P.L.J. 700 (Mullickand Atkinson, JJ.), and Lagan Bart Kuer v. Bhukhan Singh [1917] 3 P.L.J. 92. The other High Courts took the same view: vide Khechara v. Kharaj Singh [1910] 33 All. 20 (Tudball, J.); Lurkhur Chaube v. Ram Bhajan Chaube [1903] A.W.N. 214, Chhunu Lal v. The Bank of Upper India, Limited, Delhi [1917] 106 P.W.R. 1917, Amjad Ali v. Muhammad Israil [1897] 20 All. 11 and Ranga Pai v. Baba [1897] 20 Mad. 398 (Shepard and Davies, JJ.), Jugal Pershad Singh v. Parbhu Narain Jha [1910] 37 Cal. 914 and Badri Prasad v. Kundan Lal [1893] 15 All. 117 (Edge, C.J.), Kunwar Karan Singh v. Gopal Rai [1909] 32 All. 69 (Tudball, J.); and Balkaran Rai v. Gobind Nath Tiwari [1890] 12 All. 129 (Edge, C.J.).

51. Now in order that the decision of the Taxing Judge shall be final, the following conditions would seem to be necessary: (1) there must be a contest between the officer whose duty it is to see that proper Court-fee is paid and the suitor, and (2) that an opportunity is given to the parties to the contest, namely, the suitor and the Government. Therefore, the decision of the Taxing Officer cannot be final if he determines it ex parte and without giving an opportunity to the suitor to show by adducing evidence or otherwise what the value of subject-matter of the appeal and consequently the amount of Court-fee payable should be; Jugal Pershad Singh v. Parbhu Narain Jha [1910] 37 Cal. 914 and Kasturi Chetti v. Deputy Collector, Bellary (1898) 21 Mad. 269 (Collins, C.J. and Benson, J.) and Amjad Ali v. Muhammad Israil [1897] 20 All. 11.

52. Apart from authorities, upon general principles also there can be no decision upon a contest between two disputants if the aforesaid principles are violated. There must, therefore, be an inquiry into the questions such as those relating to valuation in order to determine the amount of Court-fee payable under Section 5 by the Taxing Officer.

53. Now, let us examine the decision of the Taxing Officer in the present case in the light of the aforesaid principles. The learned Taxing Officer says:

The learned Vakil for the Appellant appears to dispute the corrections of the Stamp Reporter, asking that it should be referred to the Bench. This is, however, a matter for the Taxing Officer so far as the appeal is concerned. In my opinion the Stamp Reporter has rightly assessed the value of the land in dispute at Rs. 1,406-12 including mesne profits and Court-fee is payable on it. I allow three weeks time to make good the deficiency on the memorandum of appeal, failing which place before the Bench for orders.

54. The Appellant in the present case disputed the correctness of the Stamp Report. There was, therefore, a dispute as to difference between him and the Stamp Reporter as to the amount of fee payable. The Taxing Officer had, therefore, jurisdiction to determine the dispute and to give a decision thereupon under Section 5 of the Act. The suitor disputed the jurisdiction of the Taxing Officer and asked for a reference of the question to a Bench. The Taxing Officer refused this request and said that the matter was entirely for him to decide, and not for a Bench. So far it is all right. Thereafter, the Taxing Officer at once says that in his opinion the Stamp Reporter

rightly assessed the value of the land in dispute. It does not appear that the Taxing Officer exercised his mind to determine the question judicially, nor does he seem to have made any inquiry into the matter. The order sheet does not show that any opportunity was given to the Appellant to prove the value of the land, that is the subject-matter in dispute in the appeal. It is, therefore, doubtful whether his decision in the present case is in consonance with the principles enunciated above and whether his decision is final.

55. As set out in the beginning of the judgment the question referred to us for determination is a general one as to the jurisdiction of the Taxing Officer to decide the question relating to valuation for determining the amount of Court-fee payable by the Appellant, and I would answer the question in the affirmative. I confess that I felt considerable difficulty in deciding this question. The difficulty felt by me was so insurmountable that I was almost inclined to say that the question raised by the Division Bench and referred to us for decision was incapable of solution, and it is after a long and careful consideration that I have tried to give effect to the plain words of the statute in S- 5 of the Act. The Act is so inartistic and unscientific that upon every question of importance it hardly affords sufficient solution. For instance, there is no provision in the Act whereby the principles enunciated in Section 7 for the determination of the class applicable to suits and memoranda of appeals in the subordinate Courts can be applied to the memorandum of appeal filed in the High Court. Under Section 7(5) the Court-fee payable is not upon the market value of the subject-matter of the land but upon the revenue assessed upon the land if it forms an entire estate or a definite share of an estate paying annual revenue to Government. Under Section 7, Clause (2) the Court-fee is payable not upon the value of the subject-matter of the suit but upon ten times the amount of maintenance or annuity payable for one year. In other words, in certain classes of cases Court-fee is payable not upon the actual amount in claim but upon principles fixing some fictitious amount as the value of the suit. These principles are, however, in practice applied by the Stamp Reporter, the Taxing Officer and the Taxing Judge to appeals filed in the High Court whereas under the strict construction of the law the amount of fee payable in the Courts below will be upon fictitious valuation under the principles enunciated in Section 7 and in the High Court in the appeals in those cases the amount of fee payable will be payable upon the actual amount or value of the subject-matter in dispute under Schedule I, Section 7 not being applicable to the High Courts but only to the subordinate Courts. The power is given only to demand an additional fee in the interest of revenue and does not in any way give relief to a suitor from whom the subordinate Courts on account of any wrong decision as to valuation have levied a higher fee than was payable upon the plaint or memorandum of appeal in those Courts, except in certain contingencies arising under Section 13 of the Act. It would appear that the Act does not purport to give any relief to a suitor from whom an improperly excessive fee has been taken in the subordinate Courts or in the High Court. Mr. Justice Mahmud, while concurring with the decision of Chief Justice Sir John Edge in *Balkaran Rai v. Gobind Nath Tiwari* [1890] 12 All. 129, says: "The enactment, as the learned Chief Justice has explained is most anxious to collect money from those who seek to obtain justice, but there is not one word in that statute to enable the litigant who is to be subject to these stringent rules to re-obtain the sum of money which he, by dint of a wrongful user of the powers given to the Taxing Officer, does pay as Court-fee say, for example, Rs. 3,000 instead of Rs. 10, as may be the case where difficulty may arise as to whether a suit or an appeal deals with a declaratory claim or a claim including reliefs of a consequential character. I mention this on purpose, as I hope that this enactment will soon be considered fit to be amended, and that a difficulty such as has arisen in this case may not arise in

future and that no plea *ad misericordiam* such as were addressed in this very case might be made the subject of consideration by the Judges of a whole High Court established by Her Majesty's Charter. The stringency of the Act as it has been now interpreted is probably a good thing for the litigant, because it indicates the necessity of amendment in his behalf. I hold, following the views of Jeremy Bentham, that law-taxes, the more stringent they are the less do they achieve their aim; for they are stringent not in the interest of justice but make the administration of justice difficult and in many cases impossible.

56. These are some of the anomalies, and I wish that the Act which is coming down from 1870 be soon placed on a scientific basis.

57. I have already discussed the actual question referred to us and I have indicated my answer. Accordingly, I agree with the learned Chief Justice in the answer proposed by him.

Das, J.

58. I adhere to the opinion which I have expressed in the order of reference. The question for consideration is whether the words employed by the legislature in Section 4 of the Court-Fees Act are of sufficient amplitude to authorize the special officer brought into existence by Section 5 to investigate a question of valuation for the purpose of determining the amount of any fee chargeable on the memorandum of appeal in the High Court. The liability of the suitor to pay the fee is determined by Section 4; Section 5 provides for the procedure to be adopted in cases of difference between the officer and the suitor as to the necessity of paying a fee or the amount thereof. It is not open to doubt that unless an enquiry into the question of valuation is implied in the terms of Section 4, there is no power in the officer under Section 5 to undertake that enquiry.

59. It seems to me that Section 4 is clear on this point. That section provides, *inter alia*, that no document of any of the kinds specified in the first or second schedule to the Act annexed as chargeable with fees shall be filed, exhibited, or recorded in the High Court in the exercise of its Appellate Jurisdiction-unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. The memorandum of appeal in this case is undoubtedly comprehended within the terms of Section 4; and, as expressly provided by that section, it is necessary for the suitor to pay a fee of an amount not less than that indicated in one or other of the schedules as the proper fee for the memorandum of appeal, before the memorandum of appeal can be filed in this Court.

60. This is not denied. What is denied is that the special officer can correct the valuation and require the suitor to pay the fee on the corrected valuation. I shall presently deal with the problem whether it is possible for the special officer to investigate the question of valuation in the absence of machinery enabling him to decide such a question. I am more concerned at the present moment to show that the authority to hold such an investigation is denied by the terms of Section 4.

61. Now I attach some importance to the words "such document" in the last clause of Section 4. In my opinion, these words clearly refer to the document sought to be filed exhibited or recorded in the High Court. Can it be said that the document as corrected or rectified by the officer is "such document," within the meaning of Section 4. In respect of which the officer is entitled to claim a fee from the suitor? In

this case, the Appellants tendered a memorandum of appeal, valuing the subject matter of the appeal at Rs. 70. The valuation is part of the document as tendered by the Appellants; and if I am right in the view which I have taken, all that the officer had to do was to refer to the tables of rates of ad valorem fees in the Act and ascertain the fee payable by the appellants. But this is not the course which was adopted by the officer. He read the plaint and made the discovery that the Appellants, who were the Plaintiff's in the action, had claimed Rs. 70 per year as mesne profits due to them. He concluded that the appeal was under-valued, and he thought that the appeal should be valued at eighteen times the yearly profit. He directed the valuation to be corrected and he called upon the Appellants to pay the fee on the memorandum of appeal as corrected by him.

62. In my opinion, there was no authority in the officer to adopt this course. To assent to the procedure adopted by the officer is to say that there is authority in the officer to rectify the document sought to be filed, exhibited or recorded in the High Court. For this view, I can find no justification in the terms of Section 4. In my opinion, the words "such document" (in respect of which the suitor is to be taxed) mean the document sought to be filed, exhibited or recorded, not the document as corrected or rectified by the officer.

63. A consideration of some of the provisions of the third chapter, lends strong support to the arguments advanced on behalf of the Appellants. That chapter deals with the question of fees payable in Courts other than the High Courts and Courts of Small Causes at the Presidency Towns. Now the terms of Section 6 are identical with those of Section 4 and must, in my opinion, receive the same construction. If the words, "fee of an amount not less than that indicated by either of the said schedules" in Section 4 mean such fee as is payable, not on the memorandum of appeal as sought to be tiled, but after an investigation of the question of valuation, then those words in Section 6 must receive the same interpretation, and would authorize the Court under Section 6 to deal with the question of valuation for the purpose of determining the amount of any fee chargeable. But this was clearly not the intention of the legislature, for there is a special provision, contained in Section 12, which specifically deals with the question of valuation. If the interpretation put on the statute on behalf of the Crown be right, then it was wholly unnecessary to enact the first paragraph of Section 12, with the exception of the words, "and such decision shall be final as between the parties to the suit," for an enquiry as to valuation has already been provided for in Section 6. A construction which will lead to such a conclusion ought to be avoided. I have no doubt that the subject to which Sections 3 and 6 apply is different from that to which Section 12 applies. Sections 3 and 6 vest the officers with power to decide the amount of fee payable on the document sought to be filed. Section 12 vests the Court with power to hold a judicial enquiry into the question of valuation for the purpose of determining the amount of fee chargeable. The function to be performed under Sections 3 and 6 is ministerial; the function to be performed under Section 12 is to be performed by the Court and is purely judicial.

64. But it will be objected that there is no provision corresponding to Section 12 in the second chapter of the Act; and that consequently, if the arguments on behalf of the Appellants are to prevail, there are no means of compelling the suitor to pay so much additional fee as would have been payable, had the High Court the power to decide the matter. In my opinion, the second paragraph of Section 12 gives the High Court complete power in this respect. That paragraph runs as follows:

(ii) But whenever any such suit comes before a Court of Appeal, for

Reference or Revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided and the provisions of Section 10, para, (ii) shall apply.

65. The words in Section 12, para. 2 are general, and in my opinion, they authorise the High Court to require the suitor to pay an additional fee both on the plaint and on the memorandum of appeal in the High Court. Let me illustrate my meaning by a concrete example. A suitor files a suit in the Munsif's Court and values the subject-matter of the suit at Rs. 216-12. He pays Rs. 16-8 as the fee due on the plaint. His suit is dismissed, and he files an appeal, paying Rs. 16-8 again on the memorandum of appeal. His appeal is dismissed and he presents a second appeal to this Court, paying Rs. 16-8 again on the memorandum of appeal in this Court. This Court considers that the question of valuation was wrongly decided to the detriment of the revenue and comes to the conclusion that the subject-matter should have been valued at Rs. 1,406-12. Now this Court has complete power to require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided. Now had the question been rightly decided, Rs. 100 would have been payable by the suitor both on the plaint and on the memorandum of appeal in the Court below, and Rs. 135 would have been payable on the memorandum of appeal in this Court. The total loss to the revenue amounting to Rs. 282 8, has flowed from the circumstance that the question was wrongly decided in the Court of first instance. In other words, had the question been rightly decided, an additional fee of Rs. 282-8 would have been payable by the suitor, and, in my opinion, the High Court under the express provision of Section 12, para. 2, can require the suitor to pay the additional fee of Rs. 282-8 and stay the appeal until the additional fee has been paid.

66. I suggest that this is a far more reasonable interpretation of the statute than that which is suggested on behalf of the Crown. The enquiry by the Stamp Reporter into the question of valuation can only be on speculative lines, since the legislature has not provided him with the machinery appropriate to such an enquiry. A critical examination of the Act will show that whenever the legislature has given any power to the appropriate authority to hold an enquiry into the question of valuation, it has also given it the power to examine witnesses and take evidence in the matter. Under Section 12 every question relating to valuation for the purpose of determining the amount of any fee chargeable under the third chapter has to be decided by the Court in which the plaint or memorandum of appeal, as the case may be is filed. Section 9 provides the Court with the machinery appropriate to such an enquiry and empowers the Court to issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court. Section 19-H (2) deals with applications for Probate or Letters of Administration in the High Court. The fifth paragraph of Section 19-H authorises the Court to hold an enquiry into the value of the property of the deceased, and the sixth paragraph empowers the Court to authorise a person to hold the enquiry and for that purpose to examine the Petitioner on oath and to take such further evidence as may be produced to prove the true value of the property. It will be seen that the legislature has shown some anxiety to secure a judicial enquiry into the question of valuation and I cannot regard the absence of such provision in connection with the power vested in the officer under Sections 4 and 5 as a mere omission to be supplied by the Court on an equitable construction of the Court Fees Act. It is well-established that judicial function cannot be delegated without statutory authority and I can find no authority

in the Court Fees Act in support of the proposition that the officers under Sections 4 and 5 can embark upon a judicial investigation for the purpose of determining the value of the subject-matter. The High Court has all the powers of the primary Court and undertakes the investigation under Section 12(2) of the Act. But no express power has been given to the Stamp Reporter or to the Taxing Officer to take evidence or to direct a local enquiry and I do not see how it is possible for those officers to decide a question of valuation except on speculative lines. In this case the Stamp Reporter thought that as the suitor had claimed Rs. 70 a year as mesne profits due to him, he should have valued the subject-matter of the suit at eighteen times the yearly profit. But the suitor valued his land at Rs. 70. It is obvious that either his valuation was wrong or he had exaggerated his claim for mesne profits, and I do not see how the Stamp Reporter could possibly have proceeded on the mesne profits claimed since it was not decided that the claim was well-founded. We are entitled to expect the most scrupulous fairness in a proceeding between the Crown and the subject, especially in a proceeding to tax the subject, and I cannot assent to the method adopted by the officers for determining the value of the land.

67. But if this method is not to be pursued by the officers, there is no other method available to them. I regard the omission on the part of the legislature to provide the officers with a machinery appropriate to an enquiry into valuation as deliberate and as marking an intention not to vest them with a judicial function. It has been suggested that though no express power has been given to the officers to take evidence or to direct a local enquiry, such a power must have been given to them by implication, since, where a statute is passed for the purpose of enabling something to be done, but omits to state in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of that which the statute has in contemplation, the Courts are at liberty to infer that the statute contains that detail by implication. But there is high authority for the view that, if there be admissible in any statute, what is called an equitable construction, such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute. See *Partington v. Attorney-General* [1869] L.R. 4 H.L. 100. We are, therefore, not entitled to read into the Act words which are not there so as to hold that there is power in the officers under Sections 4 and 5 of the Act to take evidence or to direct a local enquiry for the purpose of deciding a question of valuation. If this be the right view, then it is difficult to see how the legislature could have intended that these officers should decide a question of valuation, especially when it is remembered with what scrupulous care the legislature has secured a judicial enquiry into the question of valuation whenever it has in express terms given power to undertake such an enquiry. It is a general rule of construction of statutes that, unless you are obliged to do so, you must not suppose that the legislature intended to do a palpable injustice, see *Ex parte Corbett* [1880] 14 Ch. D. 122. There is no question that a palpable injustice has been done to the suitors, if the legislature has authorised those officers to decide a question of valuation for the purpose of taxing the subject without giving them the power to hold a judicial enquiry.

68. I would answer the question put to the Full Bench as follows:--The Taxing Officer has no jurisdiction to decide a question relating to valuation for the purpose of determining the amount of court-fee payable by the Appellant either on his plaint or on his memorandum of appeal, and, if he assumes jurisdiction to decide such a question, the Court may ignore it.

Foster, J.

69. I concur with the judgment of the learned Chief Justice. Any attempt to displace the generally accepted view must, I think end only in conclusions which still remain open to reasonable controversy. The Court Fees Act is, I believe, about to be reconstructed; if so, the present question, in so far as it is a question of law, is of transitory importance.

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